

**MINUTES OF THE
CITY PLANNING COMMISSION
DECEMBER 16, 2005
J. MARTIN GRIESEL CONFERENCE ROOM
TWO CENTENNIAL PLAZA – SUITE 700
805 CENTRAL AVENUE**

CALL TO ORDER

Mr. Faux called the meeting to order at 9:05 am.

Commission Members:

Present: Caleb Faux, Terry Hankner, Deborah Holston, Jacqueline McCray, Donald Mooney, and James Tarbell

Members Absent: David Rager, and Curt Paddock

Community Development and Planning Staff:

Margaret Wuerstle, Renee Christon, Felix Bere, Steve Briggs, Caroline Kellem, Rodney Ringer and Jennifer Walke

Law Department:

Julia Carney and Dottie Carmen

APPROVAL OF MINUTES

Submission of the minutes from the December 2, 2005 Planning Commission meeting for approval.

Motion: Mr. Mooney moved approval of the minutes.
Second: Ms. Hankner
Ayes: Faux, Hankner, Holston, McCray, Mooney, and Tarbell
Nays: None, **motion carried**

CONSENT ITEMS

- ITEM #1** A report and recommendation on a Plat of Subdivision, Record Plat, for the Cottage Hill Subdivision located along the south side of Strafer Street in the neighborhood of Columbia Tusculum.
- ITEM #2** A report and recommendation on an ordinance authorizing the sale of a portion of Hiawatha Street, east of Meader Street and west of Ernst Street, to Viola Seger and Rick J. Seger, which street is no longer needed for any municipal purpose.
- ITEM #3** A report and recommendation on authorizing the City Manager to enter into the Skywalk Demolition and Fountain Square Agreement with the Fifth Third Company for the demolition of part of the skywalk, the release by the City of certain easements that are no longer needed for any municipal purpose, and the acceptance of easements for the operation and maintenance of renovated Fountain Square.

Motion: Ms. McCray moved approval of Consent Items #1- #3
Second: Ms. Hankner
Ayes: Faux, Hankner, Holston, Mooney, McCray and Tarbell
Nays: **None, motion carried**

DISCUSSION ITEM

Item #4 was moved from the Consent Agenda to Discussion Items.

ITEM #4 A report and recommendation authorizing the City Manager to enter into and execute an Agreement of Lease with the Newport Southbank Bridge Company, for the L and N Bridge Approach, which is not needed for any municipal purpose for the term of the lease.

BACKGROUND:

The Newport Southbank Bridge Company desires to preserve its access to the L and Bridge, across the City of Cincinnati-owned Bridge Approach, and to engage a vendor for activities on the bridge that will require a portion of the City-owned Bridge Approach for staging. This ordinance provides for the leasing of the Bridge Approach for a term of twenty years in exchange for the Bridge Company's assumption of maintenance and operational responsibility for the Bridge Approach.

The Newport Southbank Bridge Company owns the bridge structure and is the only party that has the capacity and who has expressed the willingness to assume the maintenance and operational responsibility of the Bridge Approach. The lease of the Bridge Approach will continue to permit the public to access the Cincinnati riverfront from Newport and will have no adverse impact on the City's use of the Bridge Approach.

RECOMMENDATION:

Department of Community Development and Planning staff recommended that City Planning Commission take the following action:

AUTHORIZE the City Manager to enter into and execute an Agreement of Lease with the Newport Southbank Bridge Company, for the L and N Bridge Approach, which is not needed for any municipal purpose for the term of the lease.

DISCUSSION

Karen Alder of the City Real Estate Division explained that the proposed lease with Newport Southbank Bridge Company was only for the surface area of the bridge. It is a limited lease allowing for very limited signage for directional purposes only. The lease will not inhibit the Recreation Department or other City agencies from putting signage on the bridge for festivals. The Newport Southbank Bridge Company will maintain the lighting and the surface area and desires the bridge to remain open for public access. The goal is to obtain consistent maintenance on the surface area of bridge because the City has no money to maintain it. Ms. Alder felt that it was a win-win situation for everyone.

Motion:	Mr. Mooney moved approval of the staff recommendation
Second:	Ms. McCray
Ayes:	Faux, Hankner, Holston, McCray, Mooney, and Tarbell
Nays:	None, motion carried

ITEM #5

Caroline Kellam, Senior City Planner, presented this report

A report and recommendation on a proposed zone change at 2001 Highland Avenue from SF-4 Single-Family to PD Planned Development in the neighborhood of Mt Auburn.

GENERAL INFORMATION:

Petitioner: Russell E. Moody
3930 Edwards Road
Cincinnati, OH. 45209

Request: A change of zoning at 2001 Highland Avenue from a SF-4 Single-Family Residential to a PD Planned Development District.

Adjacent Land Use and Zoning:

South: SF – 4 Single-Family Residential – 4,000 sf lots
SF-2 Single-Family – 2,000 sf lots

East: SF – 4 Single-Family Residential – 4,000 sf lots

North: SF – 4 Single-Family Residential – 4,000 sf lots

West: SF – 4 Single-Family Residential – 4,000 sf lots
RMX Residential Mixed
OG Office General

Staff Conference: The Planning Division staff held a public conference on this request on Thursday November 17, 2005. The petitioner, the property owner and a representative of the Cincinnati Development Fund attended. No one with any concerns or in opposition attended the staff conference.

Zoning History: Prior to February 2004 the property at 2001 Highland Avenue was an R-5 Multi-Family Medium-Density District. The surrounding area along Highland and Dorchester Avenues had the following zoning designations:

South: R-6 Multi-Family High-Density District

East: R-5 Multi-Family Medium-Density District

North: R-5 Multi-Family Medium-Density District

West: R-5 Multi-Family Medium-Density District

Existing Use: Currently the property at 2001 Highland Avenue is vacant and blighted and is surrounded by residential uses.

Proposed Use: The petitioner, Russell Moody and the owner Jim Pesta plan to convert the building into 18 condominium units with parking contained within the building. The building will be solely used for residential purposes.

BASIC REQUIREMENTS OF A PLANNED DEVELOPMENT DISTRICT:

According to Section 1429-05 of the Cincinnati Zoning Code, a PD District and the development within a PD District must comply with the following:

- (a) *Minimum Area* – The minimum area of a PD must be two contiguous acres. However, Council may approve a PD District that contains less than the minimum acreage required

for an area on affirmative recommendation of the CPC that special site characteristics exist and the proposed land use justifies the development of the property as a PD. The property at 2001 Highland Avenue is approximately 15,014 square feet or 1/4 acre.

- (b) *Ownership* – Evidence that the applicant has sufficient control over the tract of land to affect the proposed plan, including a list of all ownership and beneficial interests in the tract of land and the proposed development. This information was provided. Jim Pesta, Car Barn Lofts, currently owns the property and is the developer.
- (c) *Multiple buildings on a lot* – more than one building is allowed on a lot. There is currently one building on this site.
- (d) *Historic Landmarks and Districts* – currently the site is neither in a historic district nor does it contain a historic landmark, although the structure is eligible for the National Register of Historic Places.
- (e) *Hillside Overlay Districts* – the site is not located in a Hillside Overlay District.
- (f) *Urban Design Overlay District* – the site is not located within an Urban Design Overlay District.

CONCEPT PLAN AND DEVELOPMENT PROGRAM STATEMENT:

According to Section 1429-09 of the Cincinnati Zoning Code, a petition to rezone a property to PD must include a concept plan and development program statement. The purpose is to describe the proposed use or uses to be conducted in the PD District. The concept plan must include text or diagrams that specify:

- (a) *Plan Elements* – the applicant has submitted a survey of the site, including a metes and bounds description and has included sufficient information regarding the proposed land use, proposed rehabilitation of the existing building, floor plans, indoor parking garage, streets and driveways, (see attached site plan).
- (b) *Ownership* – the applicant owns the property at 2001 Highland Avenue that is the subject of the proposed zone change.
- (c) *Schedule* – A construction schedule has not yet been determined and will be contingent on obtaining the zone change approval and financing. The goal is to proceed as soon as possible.
- (d) *Preliminary Reviews* – All utilities are available to the site and at adequate capacities. The owner has been coordinating the infrastructure issues with MSD, GCWW and other City departments. To ensure that all proposed infrastructure is sufficient, Planning Staff will circulate a copy of the final development plan upon submission to the necessary City departments.
- (e) *Density and Open Space* – The existing building occupies the majority of the site. There is no real open space. The current footprint of the building will not increase or decrease in size. (See attached site plan)
- (f) *Other Information* – The required parking spaces (1 1/4 spaces per unit) will be provided inside the building.

PLANS:

There are no Plans that encompass or make reference to this property.

FINDINGS:

Community Response: No persons in opposition to the project attended the zoning staff conference. The only persons in attendance were the petitioner and the property owner. A letter of support from the President of the Mt. Auburn Community Council was submitted. Staff did not hear from any neighboring property owners.

ANALYSIS:

The building at 2001 Highland Avenue is unique to the Mt. Auburn community. This 1892 industrial building served as the power building and storage facility for 22 cable cars and is an important part of Cincinnati's history. The building is surrounded by smaller scale, multi-family residential structures. A residential use is an appropriate use for the building and the neighborhood. In order to get this vacant, blighted building rehabilitated, it is necessary to create more units than permitted in the Cincinnati Zoning Code. In addition, the property is landlocked and the building covers the majority of the site. The site does not meet the 2-acre minimum requirement for a PD. A waiver of this requirement is being requested.

Although this development will create 18 additional housing units in the community, all of the parking will be contained within the building. This will lessen any potential impact this development may have on the neighborhood by creating 18 additional housing units. Staff considered other zoning designations, however the immediate area is zoned SF-4. Changing this one property to a different residential zone would be spot zoning.

CITY PLANNING COMMISSION ACTION:

According to Section 1429-11(a) of the Cincinnati Zoning Code, City Planning Commission may recommend approval or conditional approval, with restrictions on the establishment of a PD District on finding that all of the following circumstances apply:

1. The PD concept plan and development program statement are consistent with applicable plans and policies and is compatible with surrounding development;

The rehabilitation and conversion of this historic structure for residential condos is an appropriate use in a residential district. Although there are no applicable community plans for the area, the neighborhood is supportive of restoring this significant part of Mt. Auburn and Cincinnati's history.

2. The PD concept plan and development program statement enhance the potential for superior urban design in comparison with the development under the base district regulations that would apply if the plan were not approved;

The rehabilitation of this vacant and deteriorated building will help revitalize the Mt. Auburn neighborhood both aesthetically and by increasing home ownership.

3. Deviations from the base district regulations applicable to the property at the time of the PD application are justified by compensating benefits of the PD concept plan and development program statement; and

Under the SF-4 Single-family zoning district only 3 units are permitted. The proposed 18-condominium units are 15 units beyond what the current zoning will permit. However, this is an unusually large existing building that is not typical of the surrounding structures in the neighborhood. The proposed number of units is necessary to justify the costs of preserving this vacant deteriorated, historic structure.

4. The PD concept plan and development program statement includes adequate provisions for utility services, refuse collection, landscaping, traffic circulation, building design and preservation.

All aspects are covered in the concept plan as submitted.

FINAL DEVELOPMENT PLAN:

Pursuant to Section 1429-13 *Final Development Plan*, a final development plan and program statement would be submitted to City Planning Commission after approval of the concept plan and Planned Development (PD) designation by City Council.

A final development plan must be filed for any portion of an approved concept plan that the applicant wishes to develop and this plan must conform substantially to the approved concept plan and development program statement. The final development plan requirements anticipate changes from the concept plan by requiring significantly more detail. Approval of the final development plan will allow the developer to obtain building permits.

CONCLUSIONS:

1. The re-zoning of 2001 Highland Avenue to Planned Development is necessary for the preservation and redevelopment of this vacant and blighted building.
2. The applicant, Russell E. Moody, has submitted a satisfactory concept plan and development program statement and has successfully met all basic requirements of the Planned Development District.
3. A historically significant, blighted building will be rehabilitated and put back into use.
4. Previously, this property was zoned R-5, which would have permitted 10 units. The new residential zoning further limits the marketability and future development of this property.
5. The PD zoning designation will not negatively impact the existing character of the surrounding area.
6. A waiver from the 2-acre minimum site size for a PD is justified by the fact that the existing historic structure creates a unique situation. Reuse of the structure, as a single-family dwelling is not practical considering the size. Additionally, this is a historically significant structure worth preserving. Condominiums are a reasonable reuse of this structure. Due to the surrounding zoning districts, it is not feasible to rezone this site without creating a spot zone.

RECOMMENDATION:

The staff of the City Planning Department recommended that the City Planning Commission take the following action:

1. Accept the concept plan for the proposed adaptive reuse of 2001 Highland Avenue into 18 condominium units; and
2. Approve a waiver for the 2-acre lot size requirement.
3. Approve a zone change from SF-4 Single-Family Residential to a PD Planned Development District at 2001 Highland Avenue with the findings that the PD is consistent with the following requirement of Section 1429-11:
 - 1) The PD concept plan and development program statement are consistent with applicable plans and policies and is compatible with surrounding development;
 - 2) The PD concept plan and development program statement enhance the potential for superior urban design in comparison with the development under the base district regulation that would apply of their plan were not approved;

- 3) Deviations from the base district regulations applicable to the property at the time of PD application are justified by compensating benefits of the PD concept plan and development program statement; and
- 4) The PD concept plan and development program statement includes adequate provisions for utility services, refuse collection, open space, landscaping, buffering, pedestrian circulation, traffic circulation, building design and building location.

DISCUSSION

Caroline Kellem stated that the surrounding area is predominately residential and in the midst of it is a 1892 historic building. The building is a large scale, 12,000 square foot structure, which is out of place in the neighborhood as well as vacant and run down. Converting the building into condominiums would help rectify this situation.

Ms. Hankner wanted to know what would happen if the developer did not follow the approved plan. Ms. Kellem pointed out that the concept plan has to be followed to the letter and within two years a final development plan must be approved by the Commission. If that does not happen then the zoning would revert back to the original zoning designation.

Ms. Holston wanted to know what the price points would be of the units.

Russell Moody, the architect on the project and Jim Pesta, the owner and developer, stated that they want to convert this 12,000 square foot historic building into an 18-unit condominium. Drastic change is not their intention but they will raise the roof slightly to allow for more windows. The maximum number of units would be 18. The average unit size is 1300 square feet with the price of \$204,000 for a unit of this size.

Roy Euvrard, Vice President of Mt Auburn Community Council wants the developers to consider an additional 1.25 parking spaces per unit for the future tenants of the building. He was concerned about the limited number of parking spaces in Mt Auburn and felt it was reasonable to request the developer's consideration on this issue.

Mr. Mooney mentioned that he thought that this was a perfect use of the PD tool.

Motion: Mr. Mooney moved approval of the staff recommendation

Second: Mr. Tarbell

Ayes: Faux, Hankner, Holston, McCray, Mooney, and Tarbell

Nays: None, **motion carried**

Item #6, item #7, and item #8 all dealt with the outdoor area issue and the Commission considered these amendments concurrently.

ITEM #6 Zoning Text Amendment for §1401-01-O6 Outdoor Eating or Drinking Area
Definition

PURPOSE:

To obtain input and direction from the Planning Commission on zoning text as it relates to the regulation of outdoor drinking areas.

PROPOSED TEXT AMENDMENTS:

§ 1401-01-06. Outdoor Eating or Drinking Area

A porch, patio, deck or other area used for consumption of food and/or beverages by the public which is not enclosed within the interior building walls of a limited restaurant, full service restaurant, or a drinking establishment and which may or may not have a solid roof cover.

§ 1401-01-06Q7. Outdoor Storage.

“Outdoor storage” means the keeping of commercial goods, equipment and raw materials in an open lot.

ITEM #7 Zoning Text Amendment for §1419-21. Limited or Full Service Restaurants and Drinking Establishments

§ 1419-21. Outdoor Areas for Limited or Full Service Restaurants or Drinking Establishments.

Outdoor ~~eating~~ areas of limited or full service restaurants or drinking establishments must be located, developed and operated in compliance with the following: *The reference should just be outdoor area for simplicity, drinking establishments are also being included.*

(a) **Location.** Outdoor eating areas on any public sidewalk or alley requires a revocable street privilege.

(b) **Maximum Size.** **The outdoor ~~eating~~ area may not exceed 25 percent of the indoor eating or drinking areas, excluding other space not accessible to the public. Additional area requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.**

(c) **Barriers.** **Decorative walls or fencing must enclose an outdoor eating area.**

(d) ~~Alcoholic Beverages. The provision of alcoholic beverages must be secondary and accessory to the provision of food.~~ Proximity to Residential Districts. Outdoor areas for limited or full service restaurants closer than 150 feet from a residential district boundary line requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses. Outdoor areas for drinking establishments may not be located within 150 feet of a residential district boundary line and no variances may be granted from this regulation.

(e) **Cooking Facilities.** **Cooking facilities may not be located in outdoor eating areas.**

(f) **Live Entertainment.** Live Entertainment, including the use of audio or visual equipment, may not be presented in outdoor ~~eating~~ areas.

(g) **Fixtures.** Furniture and fixtures provided for use in an outdoor ~~eating~~ area may consist only of movable tables, chairs, umbrellas, planters, lights and heaters. Lighting fixtures may be permanently affixed on to the exterior ~~front~~ of the building. All movable furniture and fixtures must be removed during the off-season.

(h) **Hours of Operation.** The use of outdoor ~~eating~~ areas, within 150 feet of a residential district boundary line, is prohibited between 11 PM and 7 AM on ~~weekends~~ Friday and Saturday and 10 PM and 7 AM on ~~weekdays~~ all other days. Extension of these hours requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.

- (I) **Breweries and Wineries.** Beer and wine production accessory to a limited or full service restaurant is limited to an area that may not exceed 10,000 sq. ft and may not produce any objectionable odor, dust or fumes.

Justification: These text changes were requested by the Planning Commission at the Special Meeting held on December 7, 2005

ITEM #8 Zoning Text Amendment for §1409-07. Use Regulations – Commercial Sub districts

PURPOSE:

To obtain input and direction from the Planning Commission on zoning text as it relates to the regulation of outdoor drinking areas and to ensure that all sections of the Code are consistent regarding the regulation of outdoor drinking areas.

PROPOSED TEXT AMENDMENT:

Schedule 1409-07: Use Regulations - Commercial Subdistricts

Use Classifications CN-P CN-M CC-PCC-MCC-ACG-AA Additional Regulations

Commercial Uses

Eating and drinking establishments

Drinking establishments ~~L6, L13, L14~~ ~~L6, L13, L14~~ ~~L6~~ L14 P L14 P P [See § 1419-21](#)

Restaurants, full service L6, L13 L6, L13 L6 P P P See § 1419-21

Restaurants, limited L6, L13 L6, L13 L6 P P P See § 1419-21

L14 Conditional use approval required for outdoor areas greater than 25 percent of the indoor eating and drinking areas, for outdoor areas of limited or full service restaurants located less than 150 feet from a residential zone, and/or for extended operating hours.

Justification: These text changes were requested by the Planning Commission at the Special Meeting held on Dec. 7, 2005.

DISCUSSION

Mr. Mooney had some confusion on 1419-21(d) concerning the proximity to residential districts. Referring to the regulations, he stated that a restaurant within 150 feet of a residential zone is allowed to apply for conditional use approval or a variance. However, an outdoor drinking establishment with no food is not allowed to apply for conditional use or a variance.

Mr. Mooney felt that a business that is located within a commercial zone and is at least 150 feet from a residential zone should be able to have an outdoor area for eating or drinking. Julia researched the regulations of Pittsburgh, Columbus, Cleveland, Charlotte, and Chicago to determine if they used a distance separation between any commercial and residential uses. She did not find any common standard.

Mr. Faux stated that he had suggested the 150-foot distance separation because the common lot depth in Cincinnati is 150 feet.

Mr. Mooney questioned whether the distance separation was measured from the edge of the lot on which the outdoor area was situated or from the outdoor area itself. It was determined by the Commission that 150-foot distance separation would be measured from the edge of the outdoor area and not from the edge of the lot.

The Commission was in agreement that under §1419-21(d), the last sentence should be removed and the words “limited or full service restaurant” should be removed from the first sentence of this section so that any outdoor area closer than 150 feet to a residential district boundary line could apply for a conditional use approval.

James Lins, a 23-year-old chemical engineer student at the University of Cincinnati, felt that it is unnecessary to restrict outdoor areas because they already have Ohio revised codes and the Ohio Liquor Control Board regulating them. He felt that it was unreasonable to restrict outdoor drinking areas. He commented that the police should address complaints from citizens concerning loud noise and intoxication. Any grievances should be filed against the Police Department when they do not respond to uphold the law.

Michael Smith, resident of Oakley wanted the definitions to be clear about what is and is not a drinking and/or eating establishment. He felt that if an outdoor area was not clearly defined bars would put out a bag of potato chips and call itself an eating establishment.

Pat Carroll, expressed concern about the enforcement of the laws pertaining to eating and drinking establishments and agreed with Mr. Lins. He also reminded the Commission that every liquor license includes a food service permit. Mr. Carroll explained that when a liquor license enforcement issue is called in on a business, it is the law that the police must respond to the complaint.

Carl Uebelacker, believed that the Liquor Control Board has difficulty controlling problem establishments due to the fact that they have scarce resources which causes a delay in their response when there are problems. The zoning codes should not be based on the liquor licenses. He went over the entire §1419-21 regulations in the Zoning Code saying that the majority was straight from the old code and not a new invention. He commented that the City was going in the right direction and it is all about being good neighbors.

Ms. Holston pointed out that in 1419-21(c) should be corrected to say outdoor areas instead of outdoor eating areas.

Gary Wollenweber, Zoning Chair of the Hyde Park Neighborhood council, felt that eating and drinking establishments that are surrounded by residential areas are a disadvantage to the community. He explained that the 150-foot rule would not affect any of the eating and drinking establishments in Hyde Park square. He also pointed out that in the old Zoning Code, the B-1 districts did not allow outdoor areas. The new Zoning Code greatly expands the commercial districts.

Mr. Tarbell stated that the Commission must be careful about the message that they send to businesses.

Ms. McCray stated that the Commission was only trying to strike a balance between the needs of the businesses and the needs of the residents.

Katherine Dipaola also expressed the need for clearer definitions concerning eating and drinking establishments and was supportive of the changes that have been made so far. She did research on two cities across the river and found out that according to their 2003 Zoning Code Newport and Covington

are more restrictive than what is being proposed for the City of Cincinnati Zoning Code. Outdoor areas are not allowed in the Commercial Neighborhood zones in Covington or Newport.

Gerry Kraus stated that every year there is a problem with the renewal of liquor licenses. There is a difference between the clientele in eating establishments and bars. She told the Commission that they should consider the residents as well as commercial interests.

Tom Ford felt that the amendments were moving in the right direction. He spoke about the State smoking ban and stated that when these laws go into effect that outdoor areas will be important to the bar and restaurant businesses. Outdoor areas are going to be important to people who smoke once smoking regulations are put in place. He pointed out that restrictions scare people off. He went on to state that weather is a large factor and due to that, outdoor areas will be in limited use to 80 or 90 days a year.

Ms. Hankner said that Mr. Ford was really creating an argument for what the Commission was trying to accomplish. She stated that if there are State smoking regulations then that meant more people would be outside, and that is all the more reason to protect residents in the neighborhoods.

Curtis Myers, stated that there are already noise ordinances in existence, and the City does not need more restrictions. They should just enforce the existing ordinances in the City. He handed out a copy of these regulations.

The Commission voted on each section of the proposed amendments separately.

§ 1401-01-O6. Outdoor Eating or Drinking Area - Definition

A porch, patio, deck or other area used for consumption of food and/or beverages by the public which is not enclosed within the interior building walls of a limited restaurant, full service restaurant, or a drinking establishment and which may or may not have a solid roof cover.

§ 1401-01-06Q7. Outdoor Storage.

“Outdoor storage” means the keeping of commercial goods, equipment and raw materials in an open lot.

Motion: Mr. Mooney moved approval of the staff recommendation

Second: Mr. Tarbell

Ayes: Faux, Hankner, Holston, McCray, Mooney, and Tarbell

Nays: None, **motion carried**

§1419-21(b) Maximum Size. The outdoor ~~eating~~ area may not exceed 25 percent of the indoor eating or drinking areas, excluding other space not accessible to the public. Additional area requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.

Motion: Mr. Mooney moved approval of the staff recommendation

Second: Ms. Hankner

Ayes: Faux, Hankner, Holston, McCray, Mooney, and Tarbell

Nays: None, **motion carried**

§1419-21(c) Barriers. Decorative walls or fencing must enclose an outdoor eating area.

Motion: Mr. Mooney moved approval with following change:

1. strike out the word“eating”.

Second: Ms. Holston

Ayes: Faux, Hankner, Holston, McCray, Mooney, and Tarbell

Nays: None, **motion carried**

The approved amendment should read: §1419-21(c) Barriers. Decorative walls or fencing must enclose an outdoor area.

§1419-21(d) ~~Alcoholic Beverages.~~ The provision of alcoholic beverages must be secondary and accessory to the provision of food. Proximity to Residential Districts. Outdoor areas for limited or full service restaurants closer than 150 feet from a residential district boundary line requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses. Outdoor areas for drinking establishments may not be located within 150 feet of a residential district boundary line and no variances may be granted from this regulation.

Motion: Mr. Mooney moved approval with the following changes:

1. remove the words “for limited or full service restaurants”
2. remove the entire last sentence

Second: Ms. Holston

Ayes: Faux, Hankner, Holston, McCray, Mooney, and Tarbell

Nays: None, **motion carried**

The approved amendment should read: §1419-21(d) Proximity to Residential Districts. Outdoor areas closer than 150 feet from a residential district boundary line requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.

§1419-21(e) Cooking Facilities. Cooking facilities may not be located in outdoor eating areas.

Motion: Mr. Mooney motioned to removed this regulation completely

Second: Ms. Holston

Ayes: Faux, Hankner, Holston, McCray, Mooney, and Tarbell

Nays: None, **motion carried**

§1419-21(f) ~~Live Entertainment.~~ Live Entertainment, including the use of audio or visual equipment, may not be presented in outdoor ~~eating~~ areas.

Motion: Mr. Mooney moved approval with the following changes:

1. add the language “located within 150 feet of a residential district boundary line” and
2. add language that would permit conditional use approval for entertainment in an outdoor area located closer than 150 feet to a residential district boundary.

Second: Ms. Holston

Ayes: Faux, Hankner, Holston, McCray, Mooney, and Tarbell
Nays: None, **motion carried**

The approved amendment should read: §1419-21(f) Entertainment. Entertainment, including the use of audio or visual equipment, may not be presented in outdoor areas located within 150 feet of a residential district boundary unless conditional use approval is obtained pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.

§1419-21(g) Fixtures. Furniture and fixtures provided for use in an outdoor ~~eating~~ area may consist only of movable tables, chairs, umbrellas, planters, lights and heaters. Lighting fixtures may be permanently affixed on to the exterior ~~front~~ of the building. All movable furniture and fixtures must be removed during the off-season.

Motion: Mr. Mooney moved approval of the staff recommendation
Second: Mr. Tarbell
Ayes: Faux, Hankner, Holston, McCray, Mooney, and Tarbell
Nays: None, **motion carried**

§1419-21(h) Hours of Operation. The use of outdoor ~~eating~~ areas, within 150 feet of a residential district boundary line, is prohibited between 11 PM and 7 AM on ~~weekends~~ Friday and Saturday and 10 PM and 7 AM on ~~weekdays~~ all other days. Extension of these hours requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.

Ms. Hankner stated that she did not like the proposed extension of the permitted hours of operation.

Motion: Mr. Mooney moved approval with the following changes:
1. change the hours of operation from 11 PM to 12 AM midnight on Friday and Saturday and
2. change the hours of operation from 10 PM to 11 PM on all other days
Second: Ms. McCray
Ayes: Holston, McCray, Mooney and Tarbell
Nays: Hankner and Faux , **motion carried**

The approved amendment should read: §1419-21(h) Hours of Operation. The use of outdoor areas, within 150 feet of a residential district boundary line, is prohibited between 12 Midnight and 7 AM on Friday and Saturday and 11 PM and 7 AM on all other days. Extension of these hours requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.

Schedule 1409-07: Use Regulations - Commercial Subdistricts

Use Classifications CN-P CN-M CC-PCC-MCC-ACG-AA Additional Regulations

Commercial Uses

Eating and drinking
establishments

Drinking establishments ~~L6, L13, L14-L6, L13, L14~~ ~~L6~~ L14 P L14P P [See § 1419-21](#)

Restaurants, full service	L6, L13	L6, L13	L6	P	P	P	See § 1419-21
Restaurants, limited	L6, L13	L6, L13	L6	P	P	P	See § 1419-21

L14 Conditional use approval required for outdoor areas greater than 25 percent of the indoor eating and drinking areas, for outdoor areas of limited or full service restaurants located less than 150 feet from a residential zone, and/or for extended operating hours.

Motion: Mr. Mooney moved approval with the following changes:
1. Add the words “outdoor eating or drinking area” in place of the words “ limited or full service restaurants”
Second: Ms. Hankner
Ayes: Holston, McCray, Mooney, Hankner, Faux and Tarbell
Nays: None, **motion carried**

The approved amendment should read: L14 Conditional use approval required for outdoor areas greater than 25 percent of the indoor eating and drinking areas, for outdoor eating or drinking areas located less than 150 feet from a residential zone, and/or for extended operating hours.

Mr. Tarbell left the meeting at 10:30 am.

ITEM #9 Zoning Text Amendment for §1409 Commercial District

Rodney Ringer, Senior City Planner, presented this item

BACKGROUND:

On February 6, 2004 City Planning Commission recommended that a Commercial Zoning “Task Force” (CDTF) be developed to review the Commercial District Chapter of the Cincinnati Zoning Code as part of the motion passed by City Council during the adoption of the zoning code on January 13, 2004. The CDTF was given the job of eliciting comments, concerns, and questions regarding the Commercial District Chapter of the code. In June 2005, Department of Community Development and Planning staff begin to contact the proposed members for the task force with hope of forming a committee. However, staff had a difficult time recruiting those members for various reasons. On July 27, 2005 staff was able to meet for the first time with volunteers of the "Task Force". There have been many meetings over the last 5 months in effort to review any concerns from the Task Force (CDTF) and to form recommendations for the CPC.

The following are the proposed members selected by the CPC for the Commercial Zoning “Task Force”.

- Staff from the Department of Community Development and Planning
- Staff from the Department of Buildings and Inspections
- Staff from the Law Department
- Staff from Architecture and Urban Design
- CNBDU
- Representative from the retail industry
- Representative from the neighborhood/community councils
- Greater Cincinnati Chamber of Commerce

- African American Chamber of Commerce

The following list are those members who participated on the “Task Force”.

- Staff from the Department of Community Development and Planning
- Staff from the Department of Buildings and Inspections (Reggie Lyons)
- CNBDU (Mike Wagner)
- Representative from the neighborhood/community councils (Sue Doucleff)

PROPOSED TEXT AMENDMENTS

1. Art Studio

§ 1401-01-P10. Personal Instructional Services.

“Personal instruction service” means the provision of instructional services including: tutoring, photography, fine arts, crafts, dance or music studios, [art studios](#), driving schools, vocation and trade schools not including automotive repair, diet centers, reducing salons, martial arts, yoga and workout studios with incidental retail sales.

Justification: *The new zoning code does not define the use of art studios in the definition chapter of the code.*

Motion: Donald Mooney moved approval of the staff recommendation for §1401-01-P10.
Second: Ms. McCray
Ayes: Faux, Hankner, Holston, McCray, and Mooney
Nays: None, **motion carried**

2. Contractor Storage Facilities & Radio and Television Broadcast Antenna Schedule 1409-07: Use Regulations - Commercial Subdistricts

Industrial Uses						
Production Industry						
Artisan	--	--	--	--	P	P
Limited	--	--	--	--	P	P
Warehousing and storage						
Contractor storage	--	--	--	L5 --	L5	P L5
Indoor storage	--	--	--	--	P	P
Wholesaling and distribution	--	--	--	--	P	P
Transportation, Communication and Utilities Uses						
Communications facilities	P	P	P	P	P	P
Public utility distribution system	P	P	P	P	P	P
Radio and television broadcast antenna	--	--	--	--	P C	P C
Specific Limitations						
L1 Only rooming houses licensed pursuant to Chapter 855. Rooming Houses of the Municipal Code; the maximum number of rooming units is				L2	Permitted only above the ground floor in a mixed use building.	

five, and a separate entrance for access to rooming units must be provided. The minimum rental is seven days. See § 1421-43.

L3 Fencing, a minimum of four feet in height must be provided for purposes of securing outdoor play areas which must be located in the rear yard only.

L4 Permitted, provided that there are no outdoor exercise areas, yards or pens and mechanical ventilation and air filter devices must be provided.

~~L5 Permitted provided outdoor storage is screened so as not to be visible from adjacent streets.~~

L6 Presentation of entertainment is not permitted in outdoor areas.

L5 Provided that outside storage is screened with an 8ft. privacy fence.

Justification: The location of a contractor storage in the CC Districts creates a bad image for the commercial districts. This type of use typically has things that create an eye sore for the business district and the neighborhood. The CC Districts are typically areas such as Pleasant Ridge, Oakley, and Kennedy Heights etc. In addition, the committee wanted to eliminate radio and television broadcast antenna as a permitted uses and change it to a conditional use, so that each new use can be reviewed before approval is granted.

DISCUSSION

The Law Department commented that an 8 ft fence conflicted with other sections of the Zoning Code.

The Planning Commission asked that the Law Department and Planning staff discuss the fence requirement and develop new language that would not conflict with other sections of the Code. The Commission decided to hold on this section until the new language was brought back.

Mr. Reggie Lyons, from the Department of Building and Inspections, stated that there were problems in Madisonville where an owner was using water bottles for screening an area. Unless a specific definition for fencing is added, owners will use whatever material they want and call it fencing or screening.

Mr. Carl Ubelacker requested that the Commission approve just the radio and television broadcast antenna portion of this amendment.

Motion: Donald Mooney moved to approve the radio and television broadcast antenna change from a permitted to a conditional use and to hold the sections dealing with the fencing issue until new language was developed.

Second: Ms. McCray

Ayes: Faux, Hankner, Holston, McCray, and Mooney

Nays: None, **motion carried**

3. Maximum Building Height & Setbacks (New Residential Only)

Schedule 1409-09: Development Regulations - Commercial Districts

Regulations	CN-P	CN-M	CC-P	CC-M	CC-A	CG-A	Additional Regulations
<i>Building Scale-Intensity of Use</i>							
Minimum Lot Area	0	0	0	0	0	0	
<i>Building Form and Location</i>							
Maximum building height (ft.)	50	50	85 <u>50</u>	85 <u>50</u>	85 <u>50</u>	85 <u>50</u>	

Regulations	CN-P	CN-M	CC-P	CC-M	CC-A	CG-A	Additional Regulations
Minimum building height (ft.)	15	15	15	15	15	15	
Minimum front yard setbacks (ft.)	0	0	0	0	0	0	
Maximum front yard setbacks (ft.)	0	12	0	12	--	--	See § 1409-19
Building placement requirements	Yes	Yes	Yes	Yes	No	No	See § 1409-17 and § 1409-21
Ground floor transparency standards	Yes	Yes	Yes	Yes	No	No	See § 1409-23
Residential Regulations							
New residential only							
Lot area/unit (sq. ft.)	700	700	700	700	700	700	
Front yard setback	5 0	20 0	5 0	0	0	0	
Interior side yard setback (one side/total)	0/5 0	5/17 0	5/17 0	0	0	0	
Corner side yard setback	5 0	5 0	5 0	0	0	0	
Rear yard setback	25	25	25 ²	25 ²	25 ²	25 ²	
			25	25	25	25	
Residential development in existing buildings							
Lot area/unit (sq./ft.)	500	500	500	500	500	500	

¹ ~~Additional 1 foot of setback for each 1-foot of building height above 35 feet.~~

² ~~Additional 1 foot of minimum side yard and 2-foot sum of side yard setback for each five feet of building height above 35 feet.~~

Justification: Maximum Building Heights of 85 feet is too high for any building in the commercial districts. The rationale is that the maximum building height should be the same in all of the business districts. After review of several business districts, most buildings were not more than 5-storys tall.

Also the setbacks for new residential uses in the commercial districts are too inconsistent. Changing the setbacks of the districts will make the buildings more uniformed.

Motion: Ms. Hankner motioned to leave the maximum building height as it is currently written in the Zoning Code at 85 feet.

Second: Ms. Holston

Ayes: Faux, Hankner, Holston, McCray, and Mooney

Nays: None, **motion carried**

Motion: Donald Mooney motioned to approve the proposed changes on front yard, interior yard, corner yard, but keep rear yard as it is currently written in the Zoning Code and also to keep the footnotes.

Second: Ms. Hankner

Ayes: Faux, Hankner, Holston, McCray, and Mooney

Nays: None, **motion carried**

The approved amendments should read: Schedule 1409-09: Development Regulations - Commercial Districts

Regulations	CN-P	CN-M	CC-P	CC-M	CC-A	CG-A	Additional Regulations
Building Scale-Intensity of Use							
Minimum Lot Area	0	0	0	0	0	0	
Building Form and Location							
Schedule 1409-09: Development Regulations - Commercial Districts							
Regulations	CN-P	CN-M	CC-P	CC-M	CC-A	CG-A	Additional Regulations
Building Scale-Intensity of Use							
Minimum Lot Area	0	0	0	0	0	0	
Building Form and Location							
Maximum building height (ft.)	50	50	85	85	85	85	
Minimum building height (ft.)	15	15	15	15	15	15	
Minimum front yard setbacks (ft.)	0	0	0	0	0	0	
Maximum front yard setbacks (ft.)	0	12	0	12	--	--	See § 1409-19
Building placement requirements	Yes	Yes	Yes	Yes	No	No	See § 1409-17 and § 1409-21
Ground floor transparency standards	Yes	Yes	Yes	Yes	No	No	See § 1409-23
Residential Regulations							
New residential only							
Lot area/unit (sq. ft.)	700	700	700	700	700	700	
Front yard setback	5 0	20 0	5 0	0	0	0	
Interior side yard setback (one side/total)	0/5 0	5/17 0	5/17 0	0	0	0	
Corner side yard setback	5 0	5 0	5 0	0	0	0	
Rear yard setback	25	25	25 ²	25 ²	25 ²	25 ²	
Residential development in existing buildings							
Lot area/unit (sq./ft.)	500	500	500	500	500	500	

¹Additional 1-foot of setback for each 1-foot of building height above 35 feet.

²Additional 1-foot of minimum side yard and 2-foot sum of side yard setback for each five feet of building height above 35 feet.

4. Truck Docks; Loading and Service Areas

§ 1409-15. Truck Docks; Loading and Service Areas.

Truck docks, loading and service areas are not permitted within 50 feet [that are located within 100 feet](#) of residential district boundaries and are not permitted to be used between 10 PM and 7 AM on weekdays and between 11 PM and 7 AM on weekends. [Anything outside of 100 feet does not have to meet the time requirements.](#) These facilities must be located at the side of buildings or in the rear of the site and screened so as not to be visible from residential districts. Where a building abuts a residential district, the preferred location of these facilities is the side away from the district boundary.

Justification: The increased distance between the loading and service areas and the residential district boundaries would give residential properties a buffer from adjacent commercial loading areas, while reducing the loading and unloading time constraints placed on businesses.

The Commission held this item to allow staff to correct the language.

5. Loft Dwelling Units

§ 1419-23. Loft Dwelling Units.

In commercial and manufacturing districts the owner of the loft dwelling unit has the duty to provide a statement of disclosure to all buyers and tenants acknowledging the commercial and manufacturing character of the district and acceptance of the potential for uses in the area to result in certain off-site impacts at higher levels than would be expected in residential areas. Occupancy of these units is at the risk of the owner/occupant. Loft dwelling units must be located, developed and operated in compliance with the following:

- (a) A loft dwelling unit ~~may only be established on a floor other than the first floor or basement~~ established on the first floor requires a conditional use hearing.
- (b) One loft dwelling unit may be permitted for each 1,000 square feet of interior floor area excluding the first floor or basement. No unit may be less than 500 square feet in floor area.
- (c) A loft dwelling unit may contain a studio, gallery, office, business or other use as permitted by the applicable zoning district regulations.

Justification: There are various types of loft dwelling units (studios, galleries and other businesses) that may be appropriate on the first floor in the commercial districts. By making them a conditional use ensures that each potential use will be reviewed.

Motion:	Donald Mooney moved approval of the staff recommendation with the following changes: <ul style="list-style-type: none">1. remove the words “a conditional use hearing” and2. replace with “<u>requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses</u>”.
Second:	Ms. McCray
Ayes:	Faux, Hankner, Holston, McCray, and Mooney
Nays:	None, motion carried

The approved amendment should read: (d) A loft dwelling unit established on the first floor requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses”.

6. Accessory Nonresidential Structures

§ 1421-03. Accessory Nonresidential Structures.

Structures ancillary to a principal structure are considered accessory structures. This Section establishes regulations for nonresidential accessory structures. All accessory structures must be located, developed, and operated in compliance with the following:

- (a) **Location.** Accessory structures, other than fences and walls, are not permitted in a front yard or a side yard, except for a gas station pump canopy.
- (b) **Minimum Distance from Principal Structure:** One foot. Accessory structures, other than fences and walls, within one foot of the principal structure are considered part of the principal structure.
- (c) **Building Height and Bulk.** Accessory structures are subject to the standards of the district within which the principal structure is located unless an exception to height limits is provided by § 1421-19.

Justification: Changes were recommended in this section to include gas station pump canopy's, because they are reviewed by Buildings & Inspections as an accessory structure to the principle building, and most canopy's are located in the front yard.

Motion:	Donald Mooney moved approval of the staff recommendation.
Second:	Ms. McCray
Ayes:	Faux, Hankner, Holston, McCray, and Mooney
Nays:	None, motion carried

7. Requirements for Off-Street Parking and Loading

§ 1425-03. Requirements for Off-Street Parking and Loading.

~~New off street parking and loading must be provided for uses that are established, enlarged, extended or moved onto a new lot after the effective date of these zoning regulations, or of a subsequent rezoning or other amendment establishing or increasing parking or loading requirements for the uses. When an expanded use results in an increase of more than ten percent in the number of currently required parking spaces, additional parking must be provided for the additional space based on the standards of this chapter.~~

Whenever there is a change of use in a building addition or extension of land use in any zone district which results in an increase in the number of units used to measure required parking spaces, and such change of use, addition, or extension creates a need for an increase of more than 10 percent in the number of required parking spaces, additional parking shall be provided on the basis of the increase in the number of such units of measurement based on the standards of this chapter, provided however, that in case of a change of use, addition, or extension creates a need for an increase of less than five parking spaces, no additional parking spaces shall be required.

Justification: The definition in this section is difficult to understand. The word “new” in the existing definition seems to be misleading, as well as the word “established”.

The Commission decided to hold this item until the next meeting. Ms McCray said that the sentence was too long and needed to be corrected.

8. Off-Street Parking and Loading Requirements for Commercial Meeting Facilities

Schedule 1425-19-A: Off-Street Parking and Loading Requirements

Use Classifications	Required Parking (Sq. Ft. of Floor Area)	Loading User Group
<i>Public and Semi Public Uses</i>		
Religious assembly	1 for every 30 sq. ft. in principal assembly area	
<i>Commercial Uses</i>		
Commercial meeting facility	1 for every 50 30 sq. ft.	3

Justification: The commercial meeting Facilities have similar uses as religious assembly with the exception of church services. Both are used for various types of conferences, banquets and weddings/receptions. They also create more traffic than religious assembly's because they host more functions during business hours.

DISCUSSION

The Commission felt that until a specific problem could be identified with this section of the Code, that this section should be left as currently written in the Zoning Code.

Motion: Mr. Mooney motioned to leave this section as currently written in the Zoning Code.
Second: Ms. McCray
Ayes: Faux, Holston, McCray, Mooney and Hankner
Nays: None, **motion carried**

The Commission then directed staff to review the regulation in this section that states “ 1 for every 30 sq.ft. in principal assembly area”. The Commission felt that the word “principal” should be removed and that staff should consider this change.

OTHER BUSINESS

ITEM #10 2006 Schedule for City Planning Commission meetings.

Motion: Donald Mooney moved approval of the Planning Commission meeting schedule for 2006.
Second: Ms. Hankner
Ayes: Faux, Hankner, Holston, McCray, and Mooney
Nays: None, **motion carried**

Ms. Wuerstle confirmed that the tour of the Stetson Square project for the Commissioners would be held after the January 20, 2006 Commission meeting at approximately 10:30 am and that lunch would be provided.

ADJOURN

Motion: Donald Mooney moved to adjourn
Second: Ms. Hankner
Ayes: Faux, Hankner, Holston, McCray, and Mooney
Nays: None, **motion carried**

Margaret A. Wuerstle, AICP
Chief Planner

Caleb Faux, Chair

Date: _____

Date: _____